THE AMERICAN CHURCH UNION, INC.

THE WHOLE FAITH FOR THE WHOLE WORLD

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The Legal Committee of The American Church Union, which includes representative attorneys and canon lawyers from various localities in the country, has prepared and issues this Opinion regarding Female Deacons, in which the Resolution of the 63rd General Convention declaring Deaconesses to be within the Diaconate and the Canon authorizing the ordination of women to the Diaconate (Title III Canon 26) are determined to be in conflict with the Prayer Book and Constitution and therefore null and void.

The only dissent was by one member of the Committee to IB 1 in which said Resolution is described as void because of being discriminatory and IB 2 in which it is described as void because of uncertainty. Said member of the Committee, however, concurred in all the rest of the Opinion, including IB 3 holding the Resolution void as an attempt to by-pass the Prayer Book and IIB holding the Canon void as conflicting with the Prayer Book, and specifically concurred in the resulting conclusions that both the Resolution and Canon are void.

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OPINION OF THE LEGAL COMMITTEE OF THE AMERICAN CHURCH UNION REGARDING FEMALE DEACONS

Without prejudice to the larger issue of the eligibility of women to receive Holy Orders, which subject is not treated herein, two actions of the 63rd General Convention (Houston, Texas, 1970) on the subject of female Deacons require close scrutiny from the standpoint of the Canon law of the Episcopal Church. The first of these is the Resolution declaring Deaconesses to be "within the Diaconate" and the second is the Canon "Of Women in the Diaconate". It is from the legal rather than the theological standpoint that this discussion proceeds, based on the Constitution and Canons of the Episcopal Church.

I.

THE RESOLUTION THAT DEACONESSES ARE "WITHIN THE DIACONATE"

The text of the Resolution adopted by concurrence of the House of Bishops and the House of Deputies is as follows:

> "That those made Deaconesses by the laying on of hands, with appropriate prayers, be declared to be within the Diaconate." (Journal General Convention 1970, pp. 270-271)

Sentiments to this effect had been expressed by the Bishops of the Anglican Communion at the Lambeth Conference of 1968. Since, however, the Lambeth Conference is merely a consultative and advisory body without legislative powers none of the Anglican Churches were bound thereby and it was left to each of them to implement the same by appropriate legislation. This was the apparent purpose of the Resolution of General Convention.

A. The Canonical Status of Deaconesses Prior to the 1970 Resolution

Before undertaking any discussion of the effect of such Resolution it is necessary to consider the status of Deaconesses in the Episcopal Church prior to the enactment thereof.

1. The Situation Prior to the Enactment of the First Canon on Deaconesses in 1889

Regardless of what their status may have been in any other part of the Church and at any former times in history, there was no recognition whatsoever of Deaconesses in the Episcopal Church prior to 1889. That there were women called Deaconesses and that these women had been set apart as such by Bishops is undisputed, since in enacting the first Canon on Deaconesses General Convention was dealing with a then present reality. But there being no provisions for Deaconesses in the Prayer Book, Constitution or Canons, their status was purely unofficial and extra-canonical. Their relationship was only to the Bishop who had set them apart or under whom they were working (an extra-canonical relationship, it may be observed) and to any Order or Sisterhood to which they may have bound themselves. Their relationship to the Church was merely that of Communicant.

The first step taken in General Convention looking to legislation in regard to Deaconesses was in 1871 when a joint committee was appointed to report to the next Convention "on the expediency of reviving in this Church the primitive order of Deaconesses."

A proposed Canon was offered in 1874, but the matter was referred to another joint committee to report at the next Convention. This joint committee reported a proposed Canon to the General Convention of 1877 which was adopted by the House of Bishops. There being no concurrence by the House of Deputies the matter was referred to another joint committee. The proposed Canon reported to the 1880 Convention was adopted by the House of Deputies, but this time the Bishops did not concur. Failure to get concurrence in 1877 and 1880 was apparently due to indecision as to whether Sisterhoods should be dealt with in the same Canon. The subject was referred to General Convention of 1883 which indefinitely postponed the whole matter.

In 1889 a carefully prepared Canon dealing with Deaconesses only was submitted to General Convention and was adopted by concurrence of the two Houses. Not until then did we officially have Deaconesses.

2. The Status of Deaconesses Under Canonical Legislation

a. General Principles

Their status being derived from canonical legislation and from no other source, Deaconesses in the Episcopal Church are what the Canons provide them to be and are nothing more and nothing less. A Deaconess set apart, appointed, admitted or ordered (these terms are variously used in the Canons) under such canonical provisions possesses only the status which the Canons designate. She possesses only what was given to her in the ordering, setting apart, appointing or admission by the Bishop, and the Bishop can give her only such status as the Canons then in force designate. Perhaps the scope of her duties can be enlarged by subsequent canonical amendment, but her status cannot thereby be changed. If the act of setting her apart as a Deaconess, admitting her as Deaconess, appointing her as Deaconess or ordering her as Deaconess actually constituted Ordination to the Diaconate, then she is within the Diaconate by virtue thereof and not by virtue of any resolution of General Convention. If, however, the same did not constitute Ordination to the Diaconate then she is not within the Diaconate, regardless of any such resolution of General Convention, and cannot come within the Diaconate unless or until she is ordained thereto. General Convention cannot retroactively confer the Diaconate on those who have not been ordained thereto. In the first place it cannot confer Holy Orders and in the second place there is no authority for conferring the same retroactively.

It becomes necessary, then, to consider in detail the canonical legislation on the subject of Deaconesses. The first such legislation, enacted in 1889, was designated as Canon 10, and is printed in White and Dykman Annotated Constitution and Canons Vol. 2 at p.257. In the course of renumbering the Canons it has been variously designated as Canon 24, Canon 50, and Canon 51. The amendments through the years are summarized by White and Dykman, supra. At the time of its repeal in 1970 the same (as Canon 50) stood as set forth in the volume of Constitution and Canons published for the General Convention of 1967.

b. An Office and Not an Order

Reference to the "Order of Deaconesses" by the House of Bishops in a Resolution adopted at their 1965 Special Meeting at East Glacier, Montana (Journal, General Convention 1967, p.A 7) creates the impression that the Church is possessed of such an order. Similarly, such references by various meetings of the Lambeth Conference create the impression that such an order is established by Anglical ecclesiastical polity, which is far from certain. Whether an "Order of Deaconesses" ever existed in any part of the Church is a question which cannot be determined from recorded ecclesiastical history.

The fact remains, however, that all the Canons have ever done is to create the office of Deaconess and provide for appointment thereto. The mode of appointment is variously called, and by amendment in 1964 was called ordering, but the nature of the office is not changed thereby into an order in any formal sense of the word. Perhaps the individual Deaconess was ordered but what was accomplished thereby was appointment to an office, for even the 1964 Canon which uses the word ordered refers to the office of Deaconess and admission thereto.

At no time since 1889 is there any mention in the Canons of an order of Deaconesses, although the purpose of the first approach to such a canon in 1871 seems to have been the establishment thereof.

c. Not a Holy Order

Specifically, the Office of Deaconess is not one of the Holy Orders recognized in this Church. Only three Orders are recognized -- Bishop, Priest, and Deacon (see Prayer Book p.529 - Preface to the Ordinal). Another Holy Order could be recognized only by the process of amending the Prayer Book to provide therefor. This has not been done.

The Canons do not purport to constitute Deaconesses as a Holy Order, and even if they did such an attempt would have no effect for the reason stated above.

d. Not Within the Sacred Ministry

The original Canon on Deaconesses, in specifying the duties thereof, included the words "to assist the Minister". There have also been statements that the Deaconess is authorized to do various things "in the absence of the Minister". This phrase was in the Canon repealed in 1970. If she herself were a Minister these provisions would be meaningless. The rule of statutory construction that all words be given due force and effect forces us to the conclusion that she is not a Minister.

She is not a Minister in the technical sense of the Sacred Ministry. There is a sense in which all Christians are ministers, for that word merely means servant. As the word Minister is used in the Daily Offices of the Prayer Book it seems to permit laymen so to function, and this is made clear by the Canon on Lay Readers. But as used in the Holy Communion liturgy with reference to reading the Gospel, it applies only to a Minister in Holy Orders. In the popular sense of the word a Deaconess is a minister, but in the technical sense of a member of the Sacred Ministry she is not a Minister. It is, apparently, in this popular sense that her "Ministry" is spoken of by the House of Bishops in their Special Meeting at East Glacier, Montana, in 1965. (Journal of General Convention 1967 p.A 7)

The orders of Ministers are enumerated and stated in the Preface of the Ordinal and cannot be added to by any means other than amending the Prayer Book.

e. Means of Constituting a Deaconess do not Accomplish Ordination to Ministry

The first Canon on Deaconesses provided that a Deaconess should be "set apart for that office" by an appropriate religious service, to be prescribed by General Convention or, in the absence of such prescription, by the Bishop. It is noteworthy that General Convention has never established such a service.

The service contained in the Book of Offices is quasi-authoritative in that it has the approval of General Convention, but its use was never made mandatory and it is simply authorized for use under the provisions of the Prayer Book and Constitution as a service for an occasion for which the Prayer Book makes no provision.

The Special Meeting of the House of Bishops in 1965 set forth a service for this occasion (Journal General Convention 1967 p.A 26) but this was never submitted to nor approved by the House of Deputies. It therefore has no official standing.

The service provided in the 1960 edition of The Book of Offices does not purport to be an ordination. It is called "The Form for Setting Apart of Deaconesses." There is no mention of the office of Deaconess being a Holy Order and the Bishop, in laying his hands on the candidate says:

> "N. I admit thee to the office of Deaconess, in the Name of the Father, and of the Son, and of the Holy Ghost. Amen."

It cannot be successfully contended that this accomplished an ordination to any Holy Order.

The service promulgated by the House of Bishops in 1965 is designed to look as much like an ordination as possible. Following the style of the Ordinal it is entitled: "The Form and Manner of Making Deaconesses." The first rubric provides that:

> "Before he ordains a woman as Deaconess, the Bishop shall require that she take the Oath of Conformity stated in Article VIII of the Constitution of the Church."

Not only is the word ordains used but also a requirement is made which the Constitution specifies for ordination.

However, the candidates are presented "to be admitted Deaconesses" and in his address to the people the Bishop speaks of the candidates as being "admitted to the office Deaconess." In a subsequent rubric there is mention of ordering. A disparity seems to exist between the language of the service itself and that of the rubrics. The text of the rite must govern in its interpretation in such a case.

The words spoken by the Bishop as he lays hands on the candidate are identical (except for describing the office) with those for the ordination of a Deacon:

> "Take thou authority to execute the Office of a Deaconess in the Church of God, committed unto thee, in the Name of the Father, and of the Son, and of the Holy Ghost. Amen".

The question arises as to whether the Bishops intended this as an Ordination to Holy Orders. This is answered, seemingly, by their statement at the same meeting at which this rite was promulgated:

> "It is the judgment of this House that, in "setting apart" Deaconesses through the years, it has been the intention of our branch of the Church to give the Deaconesses the gifts and powers traditionally associated with their office. We regard the action of the General Convention of 1964 in amending the Canon on Deaconesses, not as giving Deaconesses a new status with regard to their Ministry, but as clarifying a status that was already theirs." Journal of General Convention of 1967, p.A 24)

Since the change made by the 1964 amendment was the substitution of ordered for set apart it appears that the House of Bishops did not regard the same as working any change in the office of a Deaconess. Hence the use of the words ordered and ordained in the service do not alter the nature of the office either. Deaconesses, the Bishops say in effect, are what they have been before, regardless of the use of the word ordered. It would follow that this is true regardless of the insertion of technical language in the rubrics or the formula for the laying on of hands.

The Bishops seem to be on shaky ground when they speak of giving Deaconesses "the gifts and powers traditionally associated with their office." * As a matter of fact, all that has been given them is the gifts and powers conferred by the Canons. If any other gifts and powers were "traditionally associated" with their office (which is difficult to ascertain because ecclesiastical history does not detail the same) they are not conferred under the Canons.

But regardless of what this service set forth by the House of Bishops may be construed as doing, the fact remains that it cannot, under the law of the Church, do more than the Canon authorizes. The Canon does not authorize an ordination to any Holy Order. Nor could a Canon do so except by virtue of the Prayer Book, which has not been amended to accomplish the same. It can therefore be stated that this service does not accomplish ordination in the technical sense of the word to any Office of the Sacred Ministry acknowledged by this Church.

Deaconesses, of course, have been set apart by forms other than those above considered, and it is impossible to find the texts of all the services used. But by virtue of the facts set forth in the above paragraph no Bishop had authority to accomplish an ordination to the Sacred Ministry. If the language of any such services seems to constitute it an ordination to the Sacred Ministry the same was done by the Bishop as an ultra vires act and is therefore null and void and of no effect as an ordination, since there was no intention by the Church to ordain them to the Sacred Ministry.

f. Duties and Functions of Deaconess as Compared with those of a Deacon

The duties and functions of Deaconesses have been provided for since the very first by Canon. There have been several restatements thereof since 1889, the most detailed being that adopted by amendment in 1934 which remained in effect unchanged until Canon 50 was repealed in 1970. This provided:

> "The duty of a Deaconess is to assist in the work of the Parish, Mission, or institution to which she may be appointed, under the direction of the Rector or Priest in charge; or, if there be none such, to perform such functions as may be entrusted to her by the Bishop."

An enumeration of the "chief functions which may be entrusted to a Deaconess follows. These fall roughly into two classifications -- 1) administrative and educational, and 2) liturgical.

The administrative and educational functions to be performed by a Deaconess are not such as require a person to be in Holy Orders. Anyone who is qualified by training, experience and ability, whether a Deaconess or not, can be appointed to discharge such functions by the Rector, Priest in charge, or Bishop. They are often performed by administrators, social workers, or professional Church workers. (Title III, Canon 28)

The liturgical functions which may be performed by a Deaconess under Sec. 2 (b) of Canon 50 are no more extensive than those entrusted to a lay Reader under the present Title III, Canon 25, Sec.4. Indeed, they do not include the function of delivering the Cup (Sec.5 of said Canon) which was added to the permissible functions of a Lay Reader in 1967. There is nothing that a Deaconess may do which may not also be done by a Lay Reader.

The duties of a Deacon, however, are specified both in the Ordination service and in the Offices of Instruction. These include functions which have neber been entrusted to a Deaconess.

> The Ordinal (Prayer Book, p.533) says that: "It appertaineth to the Office of a Deacon, in the Church where he shall be appointed to serve, to assist the Priest in Divine Service, and specially when he ministereth the Holy Communion, and to help him in the distribution thereof."

That this authority has never been given to Deaconesses is stated by Resolution of the House of Bishops in their Special Meeting of 1965 in these words:

> "Resolved, That we declare that Canon 50, Section 2 (b) described the chief functions which presently shall be entrusted to Deaconesses. It is the judgment of this House that Deaconesses may not be permitted to administer the Elements of the Holy Communion." (Journal of General Convention p.A 24)

This specifically declares that one of the functions of the Diaconate does not devolve upon Deaconesses.

It is perfectly true that as Lay Readers, by Canonical amendment, were authorized to administer the Chalice a like amendment might have been made so to empower Deaconesses. The fact remains, however, that this was not done prior to the repeal of Canon 50, and that Deaconesses set apart, admitted or ordered under Canonical provision have never been authorized to administer the Chalice. It is only if they are considered to be Deacons that this right can be claimed for them.

In this respect, since women can now qualify as Lay Readers, a woman who is not a Deaconess may have greater privileges, liturgically, than a Deaconess.

But since the Canonical right of a Deacon is not limited to administering the Chalice, the right to administer the Host and to administer Communion from the Reserved Sacrament is now claimed for Deaconesses in the status as Deacons. This

right was not granted to Lay Readers, and it may be questioned whether it can be granted by Canon or except by amending the Prayer Book.

One of the functions of a Deacon, to assist the Priest in the service of Holy Communion, includes by general usage the right to read the Epistle and Gospel. Nothing is said in the liturgical duties of a Deaconess about assisting at the Holy Communion, and there is no warrant for her reading either the Epistle (unless she is also a Lay Reader) or Gospel. By Canon a Lay Reader may read the Epistle, and in this respect a Deaconess has an inferior status to a Lay Reader. But even a Lay Reader may not read the Gospel, and there is no warrant for a Deaconess to do so.

It may also be pointed out that the Deacon is to assist the Priest (Ordinal, supra, and Offices of Instruction, p.294) whereas the Deaconess is to assist in the work of the Parish, etc. This is an important distinction.

8. The "Indelibility" of the office of Deaconess

From the very first the Canon on Deaconesses has provided for her removal from this office. The means thereof have varied, and in the later amendments what almost amounts to an ecclesiastical trial is ordered as the process therefor.

The removal of a Deaconess from that office has never been quite the same as the Deposition of a Deacon, Priest, or Bishop from the Sacred Ministry. In the case of one in Holy Orders no new ordination is required if it is deemed proper to restore such person to his ministerial functions. All that is required, under the Canons, is "Restoration" by the Bishop, subject to certain safeguards in the process.

This is not true in the case of Deaconesses. In the original Canon 10 it was provided that a Deaconess who was removed had to be readmitted if she wanted to carry on the work and the Bishop agreed thereto. This means that the whole process of admitting her or setting her apart had to be gone through over again. While this particular Canon has been amended, there has never been incorporated into the canons a procedure for "restoring" a Deaconess once she has been removed.

It may also be observed that up until 1964 if a Deaconess married her appointment was "vacated." The whole procedure by which she became a Deaconess was nullified. This speaks plainly to the conclusion that her status was not "indelible" in the same sense as Holy Orders.

At the Special Meeting of the House of Bishops in 1965 a resolution was adopted in these words:

> "Resolved, that when a Deaconess is "ordered" by the Bishop with prayer and the laying on of hands, together with a formula giving authority to execute the Office of Deaconess in the Church of God, she receives an indelible character for this Ministry in the Church of God." (Journal of General Convention of 1967, p.A 7)

It may be pointed out that no Deaconess was so "ordered" prior to 1965, as the word ordered was not used with even quasi authority prior to that time. Whatever may have been the effect of this Resolution on Deaconesses "ordered" under the form set forth by the House of Bishops, it could not affect, retroactively, any Deaconess set apart or appointed prior to that time, nor could it affect any Deaconess who had not been ordered as the 1965 formula specified.

It may be further pointed out that a Resolution adopted by the House of Bishops alone, and that at a Special Meeting, is not binding on the Church as to the status of indelibility. Since the concurrence of the House of Deputies was neither sought nor obtained, this was purely an opinion of the Bishops.

Finally, it may be pointed out that the status of indelibility cannot be conferred even by joint action of the two Houses in General Convention. It is of the very character of Holy Orders. If a Deaconess has been ordained to Holy Orders she has an indelible character, and if not she has not. It is as simple as that.

Since Deaconesses have not, as shown above, been ordained to Holy Orders their status is not that of indelibility regardless of what the House of Bishops may have resolved.

h. The Status of Deaconesses at the Time of the Repeal of Canon 50 in 1970

From the foregoing it appears that Deaconesses, at the time of the repeal of Canon 50 in 1970, were simply the holders of an office created by Canon. They possessed the powers and authority granted to them by Canon. They were not ordained to the Sacred Ministry or to any Order thereof. They were simply lay persons, differing only in degree but not in kind from lay Readers or Professional Church Workers.

B. Effect of the 1970 Resolution

1. Does Not Cover all Deaconesses. Is Discriminatory and Therefore Void.

The Resolution of 1970 purports to cover only

> "those made Deaconesses by the laying on of hands with appropriate prayers."

There has never at any time been a requirement of laying on of hands specified in the Canon. Section 8 of Canon 10, adopted in 1889, provided that:

> "No woman shall act as Deaconess until she has been set apart for that office by an appropriate religious service, to be prescribed by the General Convention, or, in the absence of such prescription, by the Bishop."

Only minor changes were made by subsequent amendments. As the provision stood at the time of the repeal of Canon 50 in 1970, Section 9 thereof was identical to the foregoing except that the words "be recognized" are substituted for "act as" and "admitted to" are substituted for "set apart as", except also that the "either" is inserted before reference to the General Convention and except also that the words "of the Diocese of Missionary District" are inserted after the last word "Bishop." None of these minor changes alter the sense of the section or require anything further than "a religious service" in which the laying on of hands is not prescribed.

The act of laying on of hands, it is true, is specified both in the services in the various editions of The Book of Offices and in the Service set forth by the House of Bishops in 1965. Neither of these services, however, has any official standing, as pointed out above, and a Bishop is free to devise his own service for the setting apart or admission of a Deaconess, which may or may not involve the laying on of

hands. In fact, some may have done so.

It would appear that there may be some Deaconesses, lawfully admitted, who did not receive any laying on of hands. It would have to be determined in the case of each individual Deaconess whether she is qualified by the terms of this resolution.

Under the rules of statutory construction a discrimination made without sufficient basis between persons in the same general classification voids the statute. There is no reason why this should not be the case here. There is no canonical basis for making a distinction between Deaconesses made such by the laying on of hands and those who have not received the same. It may be that in 1970 no Deaconesses were known to have been made such except by the laying on of hands, but this possibility does not validate a piece of legislation which discriminates against any who may not have received the same. The discrimination is there, whether such individual cases are ascertainable or not. This discrimination would seem to invalidate the resolution.

2. The Resolution is Uncertain and Therefore Void

The resolution requires not only that the Deaconess has been made such by the laying on of hands, but also by "appropriate prayers."

What prayers are appropriate? Nothing is said as to how this appropriateness shall be determined. Presumably the services set forth by the House of Bishops and in The Book of Offices contain "appropriate" prayers. The presumption would be stronger in the former case than in the latter, since The Book of Offices is published by the authority of General Convention -- both Houses -- while the 1965 service bears only the authority of one House -- the Bishops. But what about other services than these which may have been used by individual Bishops? What is the standard for appropriateness?

Moreover, there is no provision as to how such appropriateness shall be determined or who shall determine the same. Are guide lines to be set up or is each Bishop to decide for himself in the case of each Deaconess?

Under the rules of statutory construction ambiguity and uncertainty which are such as to affect its application make the statute void. There is no reason why thiis should not be the case here. Ambiguity and uncertainty would seem to invalidate the resolution.

3. The Resolution Is Void as an Attempt to By-pass the Prayer Book

a. Does Not Make Them Deacons

As shown above, Deaconesses have never been ordained as Deacons, are not in Holy Orders, and have never been entrusted with the functions of a Deacon. Any attempt to make them such by Resolution of General Convention amounts to an attempt to by-pass the Prayer Book. The Preface to the Ordinal (Prayer Book p.529) declares that

> "no man shall be accounted or taken to be a lawful Bishop, Priest or Deacon in this Church, or suffered to execute any of said Functions, except he be called, tried, examined, and admitted thereunto, according to the Form hereafter following, or hath had Episcopal Consecration or Ordination."

In case it be contended that the words "no man" refer only to the male sex and that women are excluded from this prohibition, it must be remembered that when these words were first written (and they were taken from the English Ordinal of 1550) it was not considered possible for women to receive Holy Orders at all. The same was true in 1792, when the Ordinal was incorporated into the American Prayer Book, and at the time of the last revision thereof in 1928. The words "no man" mean no person.

The exception "or hath had Episcopal Consecration or Ordination" refers to those ordained by Bishops whose orders the Church recognizes but with whom we are not in communion. This was put in originally to cover the cases of men ordained with the Latin Ordinal before the English Ordinal was issued, and is now used also to cover men ordained by Roman Catholic Bishops. It is not germane to the present situation, for no Deaconess so far as is known claims to have been "Ordained" under the circumstances contemplated thereby.

Again, General Convention cannot confer Holy Orders. The only way that any person can become a Deacon is by being ordained as such in conformity with the Book of Common Prayer.

Moreover, ordination cannot take place retroactively. There is no warrant in the Constitution or Prayer Book for declaring a person to be within Holy Orders when he has not previolusly been ordained therein.

Considering all of the foregoing, it appears that the Resolution of General Convention in 1970 declaring Deaconesses to be "within the Diaconate" does not make them Deacons, and that in purporting to act as Deacons their conduct is in violation of the Prayer Book (p.529). It appears further that any Bishop or Priest or any congregation suffering one who has been set apart, admitted or ordered as a Deaconess so to function as to purport to be a Deacon is also in violation thereof.

b. Deaconesses Do Not Attain Any Other Status "Within the Diaconate"

It might be contended as mentioned above that the resolution envisions a Diaconate which included several types of Deacons, and that it places the Deaconess in a situation somewhat like that of a Sub-Deacon in the Medieval and Roman Churches. This, however, seems to be negated by the functions and responsibilities being currently assigned to Deaconesses, which are those of Deacon and not an inferior order of the Diaconate. It must be remembered that a Sub-Deacon did (and in the present Roman Church does) not have all of the authority and functions of a Deacon.

Moreover, the former (and present Roman) practice was not to consider Sub-Deacons as "within the Diaconate" but to make them a separate Order. In the Roman use the three major Holy Orders are "Sub-Deacon, Deacon, and Priest." A Bishop is considered as a Priest of a higher grade and not in a separate order. So the Diaconate would not include Sub-Deacons.

Finally, there is no authority in this Church for any order "within the Diaconate" except Deacons. The Prayer Book is our highest authority. No such order has ever been created therein. The Canon "Of Ordination to the Diaconate" (Title III, Canon 10) refers to the Order of Deacons and to no other order.

Considering all the foregoing, it cannot be claimed that Deaconesses are constituted a separate order "within the Diaconate."

The resolution in question was an act of General Convention beyond the scope of its authority and it therefore is of no effect.

II.

CANON "OF WOMEN IN THE DIACONATE" - TITLE III CANON 26

This Canon, enacted by the 63rd General Convention at Houston in 1970 purports to authorize the ordination of female Deacons. Section 1 thereof reads:

> "A woman of devout character and proved fitness may be ordered Deacon by any Bishop of this Church, subject to the provisions of this Canon."

A. The Ordinal Provides for Male Deacons Only

Regardless of what the Canon may provide, the whole matter of the Ministry of the Church is governed by the Prayer Book, and, specifically, that portion thereof designated as the Ordinal. A Canon cannot alter the Prayer Book. The only way the Prayer Book can be altered is by amendment by two successive General Conventions as set forth in Article X of the Constitution.

The Prayer Book, in the said part thereof designated as the Ordinal, makes provision for the ordination of males only as Deacons, and the Canon purports to provide for the ordination of females.

1. Nouns and Pronouns of the Male Gender

a. The noun "Man"

Thrice in the Preface to the Ordinal (Prayer Book p.529) the word "man" is used. The first two references are in the first paragraph "no man shall presume to execute any of them" (Ministerial Functions) and "no man shall be taken or accounted to be a lawful Bishop, Priest or Deacon" except by virtue of Episcopal Ordination. This does not mean that women can be taken as Bishops, Priests and Deacons without Episcopal Ordination. In view of the prevailing view at the time the words were put into the Prayer Book (1550 in England, 1792 in America and 1928 in the last American revision) that only males could receive Holy Orders, they are the equivalent of "no person." There is simply no provision for women in Holy Orders.

The other occasion is in the last paragraph and specifies that the Bishop, knowing "any person to be a man of virtuous conversation" etc., may ordain him. This likewise comes from a day when women in Holy Orders were not contemplated. It does not say "a woman" of virtuous conversation, etc., but rather "a man."

b. The Pronouns He, Him and His

The pronoun he occurs three times in the Preface to the Ordinal, three times in the text of the Prayer Book "Form and Manner of Making Deacons," and four times in the rubrics of said service.

The pronoun him occurs once in the Preface to the Ordinal.

The pronoun his also occurs once in the text of the Ordination rite for Deacons.

Not only does the use of the masculine gender clearly describe the sex of the persons to be ordained -- it also excludes persons not covered thereby, that is, females. As used when the ordination of women was not contemplated, these words cannot include them.

c. Precedents for Strict Construction of Gender

If it be contended that the word "man" should be construed in a generic sense to include women or that the masculine pronouns should be construed in a general sense to include the feminine, former actions of General Convention establish a precedent to the contrary.

The long struggle for the inclusion of women in the House of Deputies is a case in point. The word Laymen contained in Article I Sec. 4 of the Constitution has consistently been held not to include women. Several attempts to seat women in the House of Deputies in recent years have failed as the House declined to accept such a generic construction of the word Laymen. It ultimately required a Constitutional amendment, changing the word to Lay Persons to accomplish the seating of women in the House of Deputies. This amendment was enacted on second reading in 1970. This is a binding precedent in the present case and precludes the inclusion of females under the male designations in the Ordinal.

The Joint Commission on Ordained and Licensed Ministries submitted to the 63rd General Convention meeting at Houston in 1970 a Report which declared that General Convention had the interpretive authority to consider such words in the Ordinal and Constitution in their generic sense, with a resolution so construing them. This was referred to the appropriate committee in the House of Deputies, which brought in a resolution declaring women to be eligible to ordination "subject to the resolution of any constitutional or canonical questions." Apparently the claim of the Report that Convention had the interpretive power over the Constitution and Ordinal was not taken seriously enough even to resolve for debate. The Resolution, incidentally, was defeated.

The contention of the above mentioned joint Committee that General Convention has interpretive authority is weakened by reference to the case of Lay Readers. The office of Lay Reader is established by Canon; all that would be involved is the interpretation of a Canon, and this is a different situation, not a Prayer Book or Constitutional provision. Moreover, the word male which appeared in the old Canon 49 was deleted by the Special General Convention II at South Bend in 1969. True, the masculine pronouns are still included in the Canon "Of Lay Readers" Title III Canon 25. Convention, however it may construe the Canons, has no right to interpret either the Constitution or Prayer Book in other than their literal meaning.

2. The Background of the Ordinal

It must be remembered that no part of the Prayer Book -- and this includes, of course, the Ordinal, was conceived or exists in a vacuum. Adopted by the American Church in 1792, the Ordinal is a virtual reproduction of the English Ordinal of 1550. The presuppositions inherent in the English Ordinal of 1550 obviously are a part thereof, particularly since the Preface to the Book of Common Prayer, of which the Ordinal is a part, declares that

> "this Church is far from intending to depart from the Church of England in any essential point of doctrine, discipline, or worship, or further than local circumstances require."

The discipline and worship of the Church of England, at the time the Ordinal was adopted, and at the time the same was incorporated in the American Prayer Book, contemplated that males only would receive Holy Orders. Nor has the Church of England provided for females in Holy Orders since. This was a point of Discipline and Worship, if not of Doctrine. Nor can it be successfully contended that local circumstances require departure from such discipline at this time.

And, of course, behind the discipline of the Ordinal stands that of the Western Church and the undivided Church before the great schism. The ordination of females was not contemplated in either.

This is not to argue that it is beyond the constitutional power of the Episcopal Church to provide for female Deacons by amendment to the Ordinal, but rather to emphasize the point that the Ordinal does not contemplate the ordination of women to any of the Holy Orders, and that to provide therefor amendment to the Ordinal (part of the Prayer Book) would be necessary. However, if the Ordinal were so amended, the question would then arise as to whether the Episcopal Church could alter the Ministerial Order of the Holy Catholic Church.

B. Constitutional Processes Must Be Followed

Since the ordination of males only to each of the three Holy Orders is contemplated by the clear language and the historical background of the Ordinal, any attempt to authorize the ordination of women as Deacons by Canon would make the Canons superior to the Prayer Book. Such is not the rule in this Church.

We have a constitutional process by which the ordination of women in the Office of Deacon could be provided for. That would be the proper amendment of the Ordinal in the Prayer Book by two successive General Conventions to authorize and allow the same. (But see the last paragraph under 2 above.) In the absence of such amendment to the Prayer Book the Canon "Of Women in the Diaconate" is void as conflicting with the Prayer Book.

C. The Status of Female Deacons Ordained Under the Canon

The status of women ordained Deacon under this Canon is an important matter. Whether such ordinations are to be considered void or valid but irregular is a question on which we are not prepared to pass judgment at the present time. To answer this question a decision must be reached on the eligibility of women to receive Holy Orders and this memorandum is not addressed to that subject.

*Since the above was written our attention has been called to Canon XIX of Nicaea which provides that Deaconesses are ranked with the laity since they have received no Holy Orders.